

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
NORTHERN DIVISION**

DEMARIO S. CANNON
ADC #155021

PLAINTIFF

v.

Case No. 3:21-cv-00037 KGB

KEITH BOWERS, Captain
Craighead County Detention Center

DEFENDANT

ORDER

Before the Court are Proposed Findings and Recommendations (“Recommendations”) submitted by United States Magistrate Judge Joe J. Volpe (Dkt. No. 5). For the following reasons, the Court declines to adopt the Recommendations (Dkt. No. 5).


Judge Volpe initially entered an Order granting leave to proceed *in forma pauperis* and screening plaintiff Demario S. Cannon’s complaint (Dkt. No. 3). Judge Volpe directed Mr. Cannon to file an amended complaint following the 42 U.S.C. § 1983 complaint form from the Clerk of Court within 30 days of entry of that Order (*Id.*). Mr. Cannon failed to file an amended complaint timely, but based on a review of the docket, Judge Volpe’s initial order screening Mr. Cannon’s complaint, sending to him the 42 U.S.C. § 1983 form, and directing him to amend within 30 days never reached Mr. Cannon (Dkt. No. 4). That mail was returned as undeliverable.

Judge Volpe’s Recommendations currently pending before this Court advise the Court to dismiss without prejudice Mr. Cannon’s original complaint as deficient because Mr. Cannon failed to amend timely and to cure the deficiencies Judge Volpe identified (Dkt. No. 5). Those Recommendations do not account for the fact that Mr. Cannon did not receive a copy of the initial Order. Moreover, as the Court observes and based on a review of the docket, Mr. Cannon did not receive timely the Recommendations because his address changed (Dkt. Nos. 6, 7, 8).

The Court directed that the Recommendations be sent to Mr. Cannon at his current address and, on its own motion, extended his time to object to the Recommendations. Mr. Cannon submitted timely objections to the Recommendations (Dkt. No. 10). He also then filed a motion for leave to amend his complaint (Dkt. No. 11). Mr. Cannon then filed a motion for status update (Dkt. No. 12).

On the record before the Court, the Court rejects Judge Volpe's Recommendations (Dkt. No. 5). The Court permits Mr. Cannon to file his amended complaint and directs the Clerk to docket Mr. Cannon's motion to amend his complaint as Mr. Cannon's amended complaint (Dkt. No. 11). The Court also requests that Judge Volpe screen Mr. Cannon's amended complaint. At this time, the Court declines to order service of process of the amended complaint. The Court grants Mr. Cannon's motion for status update and directs the Clerk of Court to mail to Mr. Cannon a copy of this Order and the docket sheet for this case (Dkt. No. 12).

It is so ordered this 7th day of February, 2022.



Kristine G. Baker
United States District Judge